

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 49 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

STATE OF GUJARAT

Versus

VASIM ULLA MAHOMAD MUNIR MALIK

Appearance:

Mr.K.P.Raval, APP for the petitioners.

Respondent served.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 04/11/96

ORAL JUDGEMENT

The State of Gujarat and the Deputy Conservator of Forest, Vyara, have filed the present petition under Article 227 of the Constitution of India, challenging the judgment and order dated 21st May, 1991 in Criminal Appeal No.15/89 passed by the Sessions Judge, Surat, whereby the learned Sessions Judge, partly allowed the appeal and modified the order passed by the Deputy Conservator of Forest in Crime No.39/87-88 and directed

the respondent to pay a penalty of Rs.25,000/- and on payment of the said penalty, the Deputy Conservator of Forest was directed to give the custody of truck No. GTC-3519 to the respondent.

The facts giving rise to the present petition are as under: On 6-12-1987, the Range Forest Officer, Vyara seized Truck No. GTC-3519 loaded with forest wood. On being interrogated, the driver of the truck was not having any transit pass or permit to remove the forest wood. Therefore, the forest wood as well as the offending truck were seized. The Deputy Conservator of Forest, Vyara, after undergoing the procedure of the Forest Act, passed an order of confiscation of the offending truck. The respondent, who is the owner of the truck, challenged the said order by filing an appeal under section 61-D of the Indian Forest Act before the Sessions Court, Surat. The learned Sessions Judge, after appreciating the evidence, has recorded the finding that the respondent is the owner of the offending truck, and that the forest wood seized was teak wood and that when the truck was seized by the Forest Officer, the teak wood was being transported without any pass or permit with the driver of the truck. With this finding, the learned Sessions Judge negatived the contention of the respondent that it was beyond his knowledge that the truck was used. The learned Judge, however, instead of confiscating the truck in question, imposed a penalty and the custody of the truck was ordered to be given to the respondent on payment of the amount of penalty of Rs.25,000/-, as he was of the opinion that the confiscation of the truck in question was harsh and not judicious. In view of the fact that the goods in question i.e. teak wood was also ordered to be confiscated, the discretion exercised by the learned Sessions Judge by imposing a penalty for releasing the truck in favour of the respondent cannot be termed as illegal, arbitrary and perverse and no interference is called for by exercising the power under section 227 of the Constitution of India. In view of this, this petition fails and is dismissed.

In the result, this petition fails and is dismissed. Rule is discharged with no order as to costs. Ad-interim stay stands vacated. The respondent is granted four weeks time to pay the amount of penalty as directed by the learned Sessions Judge, if not paid.

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